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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/624,098
Filing Date: July 21, 2003
Appellant(s): BOWMAN ET AL.

Eric L. Prah
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 16, 2009 appealing from the Office action mailed October 17, 2008.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

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(8) Evidence Relied Upon

5827180	Goodman	10-1998
5960403	Brown	09-1999
6334778	Brown	01-2002

PR Newswire. August 23, 1999. WellMed, Inc. "WellMed Introduces Industry's First Comprehensive Personal Health Management System Including Online Health Record."

Press Release. February 22, 1999. Apelon, Inc. "WellMed and Lexical Technology Announce Joint Development Agreement for Online consumer Health Records."

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 - 5, 7, and 12 – 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the article entitled "WellMed Introduces Industry's First Comprehensive Personal Health Management System Including Online Health Record" (WellMed, Inc., Oregon, August 23, 1999. PR Newswire), hereinafter WellMed in view of Goodman (U.S. Patent Number 5,827,180).

In regard to claim 1 (Currently Amended), WellMed teaches a computer-implemented communication method (paragraph 2) comprising:

- from each of a plurality of receiving users, receiving corresponding personal health message receiving criteria for determining messages to be received by that receiving user (paragraph 8 - where WellMed offers a patient the option to join a health improvement program such as smoking

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cessation), the corresponding personal health message receiving criteria for each user including health categories that are relevant to that receiving user (paragraph 8 - where users can receive data customized to their interest and condition);

- from a transmitting user, receiving a message and personal health message transmitting criteria for directing the received message to other users (paragraph 9) where it describes allowing access to a school, new doctor, and more. WellMed fails to explicitly teach a method comprising the personal health message transmitting criteria including health categories that are relevant to the received message or to the transmitting user;
- comparing the personal health message receiving criteria for each of the plurality of receiving users to the personal health message transmitting criteria to identify those users among the plurality of receiving users to whom the received message should be transmitted (paragraph 16 – where WellMed discloses a system in which patients with the same or similar conditions can be connected); and
- transmitting the received message to the identified users among the plurality of receiving users (paragraph 16).

Goodman teaches a method comprising the personal health message transmitting criteria including health categories that are relevant to the received message or to the transmitting user (column 10, lines 29 – 36).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a method comprising the personal health message transmitting criteria including health categories that are relevant to the received message or to the transmitting user as taught by Goodman, within the method of WellMed, with the motivation of providing a personal health network (column 2, lines 44 – 45).

In regard to claim 2 (Currently Amended), WellMed teaches the method of claim 1 in which the received message is transmitted to each identified receiving user without disclosing the identity of the receiving user to the transmitting user (paragraph 16).

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In regard to claim 3 (Currently Amended), WellMed teaches the method of claim 1 in which the identified receiving users include those for whom the personal health message receiving criteria include all of the personal health message transmitting criteria (paragraph 15).

In regard to claim 4 (Currently Amended), WellMed teaches the method of claim 1 in which the identified receiving users include those for whom the personal health message receiving criteria include at least selected ones of the personal health message transmitting criteria (paragraph 6).

In regard to claim 5 (Currently Amended), WellMed teaches the method of claim 1 wherein receiving corresponding personal health message receiving criteria from each of a plurality of receiving users includes receiving identifier of a health condition that relates to that receiving user and is selected from among predefined health conditions (paragraphs 8, 13, and 15).

In regard to claim 7 (Currently Amended), WellMed teaches the method of claim 1 wherein receiving personal health message transmitting criteria includes receiving identifier of a health condition that relates to the transmitting user and is selected from among predefined health conditions (paragraphs 8, 13, and 15).

Computer readable medium claims 12 – 16 repeat the subject matter of method claims 1 - 5, and 7 as a set of apparatus elements rather than a series of steps. As the underlying elements of claims 1 - 5 and 7 have been shown to be fully disclosed by the teachings of WellMed and Goodman in the above rejection of claims 1 - 5 and 7 it is readily apparent that the computer readable medium claims disclosed by WellMed and Goodman perform the method steps. As such, the limitations of claims 12 – 16 are rejected for the same reasons given above for method claims 1 - 5 and 7, and incorporated herein.

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3. Claims 6, 8 – 11, 17, and 19 – 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over WellMed and Goodman, further in view of the article entitled "WellMed and Lexical Technology Announce Joint Development Agreement of Online Consumer Health Records," (PR Newswire. New York; Feb 18, 1999, Page 1), herein after Lexical.

In regard to claim 6 (Currently Amended), WellMed and Goodman teach the method of claim 1. WellMed further teaches a method wherein receiving corresponding personal health message receiving criteria from each of a plurality of receiving users (paragraph 16) includes receiving identifier of a user-defined health condition that relates to that receiving user (paragraphs 8, 15, and 16).

WellMed and Goodman fail to teach the method further including correlating the user-defined health condition with a health terminology thesaurus having concept unique identifiers that correspond to and provide uniform characterizations of the user-defined health condition.

Lexical teaches a method further including correlating the user-defined health condition with a health terminology thesaurus having concept unique identifiers that correspond to and provide uniform characterizations of the user-defined health condition (paragraph 3).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a method further including correlating the user-defined health condition with a health terminology thesaurus having concept unique identifiers that correspond to and provide uniform characterizations of the user-defined health condition as taught by Lexical, within the method of WellMed and Goodman with the motivation of providing a usable search tool for personal online health information (paragraph 7).

In regard to claim 8 (Currently Amended), WellMed and Goodman teach the method of claim 1. WellMed and Goodman fail to teach a method wherein receiving personal health message transmitting criteria includes receiving identifier of a user-defined health condition that relates to the transmitting user,

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the method further including correlating the user-defined health condition with a health terminology thesaurus.

Lexical teaches a method wherein receiving personal health message transmitting criteria includes receiving identifier of a user-defined health condition that relates to the transmitting user, the method further including correlating the user-defined health condition with a health terminology thesaurus (paragraph 3).

The motivation to combine the teachings of WellMed and Lexical is discussed in the rejection of claim 6, and incorporated herein.

In regard to claim 9 (Currently Amended), WellMed and Goodman teach the method of claim 1. WellMed further discloses comprising obtaining from each receiving user and the transmitting user personal health-related information about the that user, the health-related information including one or more health-related terms that each corresponds to a health-related concept (paragraphs 8, 15, and 16); and correlating with a health terminology thesaurus each of the one or more health-related terms with a single concept unique identifier that uniquely identifies a corresponding health-related concept, each concept unique identifier having associated with it one or more terms corresponding to a common health-related concept, ones of the terms being lay medical terms and not clinical medical terms (paragraph 3).

In regard to claim 10 (Original), WellMed and Goodman teach the method of claim 9. Goodman further teaches a method in which computer implementation of the method employs a client computer and a server computer that are interconnected by a computer network the method further comprising:

- providing at the client computer a user interface with which each user provides the personal health-related information about the user, the health-related information being defined by one or more health-related terms (column 13, lines 3 – 55) – Goodman teaches a method in which the health related information is relayed to a host computer as well as supplemental user information (i.e. doctor appointment, medication);

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- transmitting the personal health-related information about the user over the computer network to the server computer, (column 13, lines 3 – 55); and
- correlating each of the one or more health-related terms with a single concept unique identifier at the server computer (column 8, lines 37 – 63).

WellMed and Goodman fail to teach a method comprising the server computer storing the health terminology thesaurus.

Lexical teaches a method comprising the server computer storing the health terminology thesaurus (paragraph 3).

The motivation to combine the teachings of WellMed, Goodman, and Lexical is discussed in the rejection of claim 6, and incorporated herein.

In regard to claim 11 (Original), WellMed teaches the method of claim 10 in which the computer network includes the Internet (paragraphs 5 and 18).

Computer readable medium claims 17 and 19 - 22 repeat the subject matter of method claims 6 and 8 - 11 as a set of apparatus elements rather than a series of steps. As the underlying elements of claims 6 and 8 - 11 have been shown to be fully disclosed by the teachings of Goodman in the above rejection of claims 6 and 8 - 11 it is readily apparent that the computer readable medium claims 17 and 19 - 22 disclosed by Goodman perform the method steps. As such, these limitations for claims 17 and 19 - 22 are rejected for the same reasons given above for method claims 6 and 8 - 11 and incorporated herein.

4. Claims 23 – 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goodman in view of WellMed.

In regard to claim 23 (Original), Goodman teaches a computer-readable medium (column 7, lines 60 –65).

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Goodman fails to teach a data structure comprising: personal health message receiving criteria associated with receiving users for determining messages to be received from other users who conform to the personal health message receiving criteria, the personal health message receiving criteria including personal or health characteristics relating to the receiving users; and personal health message transmitting criteria associated with transmitting users for directing a selected message to other users whose personal health message receiving criteria conform to the personal health message transmitting criteria, the personal health message transmitting criteria including personal or health characteristics relating to the transmitting users.

WellMed teaches a data structure comprising: personal health message receiving criteria associated with receiving users for determining messages to be received from other users who conform to the personal health message receiving criteria, the personal health message receiving criteria including personal or health characteristics relating to the receiving users (paragraphs 8 and 16); and personal health message transmitting criteria associated with transmitting users for directing a selected message to other users whose personal health message receiving criteria conform to the personal health message transmitting criteria, the personal health message transmitting criteria including personal or health characteristics relating to the transmitting users (paragraphs 8 and 16).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a data structure comprising: personal health message receiving criteria associated with receiving users for determining messages to be received from other users who conform to the personal health message receiving criteria, the personal health message receiving criteria including personal or health characteristics relating to the receiving users; and personal health message transmitting criteria associated with transmitting users for directing a selected message to other users whose personal health message receiving criteria conform to the personal health message transmitting criteria, the personal health message transmitting criteria including personal or health characteristics relating to the transmitting users as taught by WellMed, within the structure of Goodman, with the motivation of providing online tools that simplify the access and control of health or medical information (paragraph 6).

In regard to claim 24 (Original), Goodman teaches the data structure of claim 23 in which one or more of the personal health message receiving criteria and the personal health message transmitting criteria are correlated with concept unique identifiers that uniquely identify health-related characteristics (column 8, lines 37 – 63).

In regard to claim 25 (Original), Goodman teaches the data structure of claim 24 in which each concept unique identifier includes numeric characters (column 6, lines 16 – 42).

In regard to claim 26 (Original), Goodman teaches the data structure of claim 24 in which each Concept unique identifier includes alpha-numeric characters (column 6, lines 16 – 42).

(10) Response to Argument

In the Appeal brief filed November 16, 2009, Appellant makes the following arguments:

(A) In regard to claim 1, the passage cited by the Examiner does not disclose or even suggest "personal health message receiving criteria."

(B) In regard to claim 1, the passage cited by the Examiner does not refer to "receiving a message and personal health message transmitting criteria."

(C) In regard to claim 1, there is no suggestion whatsoever that recipients are identified by "comparing the personal health message criteria for each of the plurality of receiving users to the personal health message transmitting criteria" as required by the claim.

(D) In regard to claim 23, Goodman fails to teach a data structure comprising: personal health message receiving criteria associated with receiving users for determining messages to be received from other users who conform to the personal health message receiving criteria, the personal health message receiving criteria including personal or health characteristics relating to the receiving users; and personal health message transmitting criteria associated with transmitting users for directing a selected message

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to other users whose personal health message receiving criteria conform to the personal health message transmitting criteria, the personal health message transmitting criteria including personal or health characteristics relating to the transmitting users.

Response to argument (A)

In response to the Appellant's argument that the passage cited by the Examiner does not disclose or even suggest "personal health message receiving criteria", the Examiner respectfully submits that the WellMed article discloses a HQ (Health Quotient) tool where an individual can input his/her health assessment. We don't know what the questions are, however the HQ tool provides an assessment based on the criteria the individual supplied to the HQ tool (thus the individual is receiving an assessment based on the tool). For instance, as disclosed in paragraph 16 of the WellMed article, if an individual is interested in smoking cessation, responses are provided based on the individual's criteria of smoking cessation, therefore, the individual is receiving a personal health message via a personalized web page. Receiving data is an inherent feature of retrieving data.

Response to argument (B)

In response to the Appellant's argument that the passage cited by the Examiner does not refer to "receiving a message and personal health message transmitting criteria", the Examiner respectfully submits the customized instant message system is matching individuals with similar conditions. Individuals diagnosed with certain conditions can be connected to others with the same condition anonymously. For instance, a person with HIV may wish to anonymously connect to another (a personal criteria), therefore, they are still connected but wish to withhold their identity due to the nature of their condition, thus the reference shows "receiving a message and personal health message transmitting criteria for directing the received message to other users."

Response to argument (C)

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In response to the appellant's argument that there is no suggestion whatsoever that recipients are identified by "comparing the personal health message criteria for each of the plurality of receiving users to the personal health message transmitting criteria" as required by the claim, the Examiner respectfully submits the customized instant message system is matching individuals with similar conditions. Individuals diagnosed with certain conditions can be connected to others with the same condition anonymously. The identification of receiving users is based on the risk factors, interest, and conditions of users set forth in the Health Quotient (HQ) tool. The personal criteria of the user can allow the user to communicate with other users with the same condition via instant messaging, thus the criteria of the transmitting users and the criteria of the receiving users are compared (i.e. matched) to determine who can communicate with who.

Response to argument (D)

In response to the Appellant's argument that Goodman fails to teach a data structure comprising: personal health message receiving criteria associated with receiving users for determining messages to be received from other users who conform to the personal health message receiving criteria, the personal health message receiving criteria including personal or health characteristics relating to the receiving users; and personal health message transmitting criteria associated with transmitting users for directing a selected message to other users whose personal health message receiving criteria conform to the personal health message transmitting criteria, the personal health message transmitting criteria including personal or health characteristics relating to the transmitting users, the Examiner respectfully submits the response to Appellant's argument is discussed in the response to argument, (A) through (C), and incorporated herein.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Kristine K. Rapillo

/Kristine K Rapillo/

Examiner, Art Unit 3626

Conferees:

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